

able to prevent or restrain a violation, but in no event shall impose a prior restraint on free speech or the press protected under the 1st amendment to the Constitution;

(2) at any time while an action is pending, may order the impounding, on such terms as it deems reasonable, of any device or product that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation;

(3) may award damages under subsection (c);

(4) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof;

(5) in its discretion may award reasonable attorney's fees to the prevailing party; and

(6) may, as part of a final judgment or decree finding a violation, order the remedial modification or the destruction of any device or product involved in the violation that is in the custody or control of the violator or has been impounded under paragraph (2).

(c) AWARD OF DAMAGES.—

(1) IN GENERAL.—Except as otherwise provided in this title, a person committing a violation of section 1201 or 1202 is liable for either—

(A) the actual damages and any additional profits of the violator, as provided in paragraph (2), or

(B) statutory damages, as provided in paragraph (3).

(2) ACTUAL DAMAGES.—The court shall award to the complaining party the actual damages suffered by the party as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages, if the complaining party elects such damages at any time before final judgment is entered.

(3) STATUTORY DAMAGES.—(A) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1201 in the sum of not less than \$200 or more than \$2,500 per act of circumvention, device, product, component, offer, or performance of service, as the court considers just.

(B) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1202 in the sum of not less than \$2,500 or more than \$25,000.

(4) REPEATED VIOLATIONS.—In any case in which the injured party sustains the burden of proving, and the court finds, that a person has violated section 1201 or 1202 within 3 years after a final judgment was entered against the person for another such violation, the court may increase the award of damages up to triple the amount that would otherwise be awarded, as the court considers just.

(5) INNOCENT VIOLATIONS.—

(A) IN GENERAL.—The court in its discretion may reduce or remit the total award of damages in any case in which the violator sustains the burden of proving, and the court finds, that the violator was not aware and had no reason to believe that its acts constituted a violation.

(B) NONPROFIT LIBRARY, ARCHIVES, EDUCATIONAL INSTITUTIONS, OR PUBLIC BROADCASTING ENTITIES.—

(i) DEFINITION.—In this subparagraph, the term “public broadcasting entity” has the meaning given such term under section 118(g).

(ii) IN GENERAL.—In the case of a nonprofit library, archives, educational institution, or public broadcasting entity, the court shall remit damages in any case in which the library, archives, educational institution, or public broadcasting entity sustains the burden of proving, and the court finds, that the library, archives, educational institution, or public broadcasting entity was not aware and had no reason to believe that its acts constituted a violation.

(Added Pub. L. 105-304, title I, §103(a), Oct. 28, 1998, 112 Stat. 2874; amended Pub. L. 106-113, div. B, §1000(a)(9) [title V, §5004(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-593.)

AMENDMENTS

1999—Subsec. (c)(5)(B). Pub. L. 106-113 amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: “In the case of a nonprofit library, archives, or educational institution, the court shall remit damages in any case in which the library, archives, or educational institution sustains the burden of proving, and the court finds, that the library, archives, or educational institution was not aware and had no reason to believe that its acts constituted a violation.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1201, 1202 of this title.

§ 1204. Criminal offenses and penalties

(a) IN GENERAL.—Any person who violates section 1201 or 1202 willfully and for purposes of commercial advantage or private financial gain—

(1) shall be fined not more than \$500,000 or imprisoned for not more than 5 years, or both, for the first offense; and

(2) shall be fined not more than \$1,000,000 or imprisoned for not more than 10 years, or both, for any subsequent offense.

(b) LIMITATION FOR NONPROFIT LIBRARY, ARCHIVES, EDUCATIONAL INSTITUTION, OR PUBLIC BROADCASTING ENTITY.—Subsection (a) shall not apply to a nonprofit library, archives, educational institution, or public broadcasting entity (as defined under section 118(g)).

(c) STATUTE OF LIMITATIONS.—No criminal proceeding shall be brought under this section unless such proceeding is commenced within 5 years after the cause of action arose.

(Added Pub. L. 105-304, title I, §103(a), Oct. 28, 1998, 112 Stat. 2876; amended Pub. L. 106-113, div. B, §1000(a)(9) [title V, §5004(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-593.)

AMENDMENTS

1999—Subsec. (b). Pub. L. 106-113 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “Subsection (a) shall not apply to a nonprofit library, archives, or educational institution.”

§ 1205. Savings clause

Nothing in this chapter abrogates, diminishes, or weakens the provisions of, nor provides any defense or element of mitigation in a criminal prosecution or civil action under, any Federal or State law that prevents the violation of the privacy of an individual in connection with the individual's use of the Internet.

(Added Pub. L. 105-304, title I, §103(a), Oct. 28, 1998, 112 Stat. 2876.)

CHAPTER 13—PROTECTION OF ORIGINAL DESIGNS

Sec.	
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1330.	Common law and other rights unaffected.
1331.	Administrator; Office of the Administrator.
1332.	No retroactive effect.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 19 section 1337; title 28 sections 1338, 1498.

§ 1301. Designs protected**(a) DESIGNS PROTECTED.—**

(1) **IN GENERAL.**—The designer or other owner of an original design of a useful article which makes the article attractive or distinctive in appearance to the purchasing or using public may secure the protection provided by this chapter upon complying with and subject to this chapter.

(2) **VESSEL HULLS.**—The design of a vessel hull, including a plug or mold, is subject to protection under this chapter, notwithstanding section 1302(4).

(b) **DEFINITIONS.**—For the purpose of this chapter, the following terms have the following meanings:

(1) A design is “original” if it is the result of the designer's creative endeavor that provides a distinguishable variation over prior work

pertaining to similar articles which is more than merely trivial and has not been copied from another source.

(2) A “useful article” is a vessel hull, including a plug or mold, which in normal use has an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article which normally is part of a useful article shall be deemed to be a useful article.

(3) A “vessel” is a craft—

(A) that is designed and capable of independently steering a course on or through water through its own means of propulsion; and

(B) that is designed and capable of carrying and transporting one or more passengers.

(4) A “hull” is the frame or body of a vessel, including the deck of a vessel, exclusive of masts, sails, yards, and rigging.

(5) A “plug” means a device or model used to make a mold for the purpose of exact duplication, regardless of whether the device or model has an intrinsic utilitarian function that is not only to portray the appearance of the product or to convey information.

(6) A “mold” means a matrix or form in which a substance for material is used, regardless of whether the matrix or form has an intrinsic utilitarian function that is not only to portray the appearance of the product or to convey information.

(Added Pub. L. 105-304, title V, §502, Oct. 28, 1998, 112 Stat. 2905; amended Pub. L. 106-113, div. B, §1000(a)(9) [title V, §5005(a)(3)], Nov. 29, 1999, 113 Stat. 1536, 1501A-593.)

AMENDMENTS

1999—Subsec. (b)(3). Pub. L. 106-113 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “A ‘vessel’ is a craft, especially one larger than a rowboat, designed to navigate on water, but does not include any such craft that exceeds 200 feet in length.”

EFFECTIVE DATE

Pub. L. 105-304, title V, §505, Oct. 28, 1998, 112 Stat. 2918, as amended by Pub. L. 106-113, div. B, §1000(a)(9) [title V, §5005(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A-593, provided that: “The amendments made by sections 502 and 503 [enacting this chapter and amending sections 1338, 1400, and 1498 of Title 28, Judiciary and Judicial Procedure] shall take effect on the date of the enactment of this Act [Oct. 28, 1998].”

JOINT STUDY OF EFFECT OF THIS CHAPTER

Pub. L. 105-304, title V, §504, Oct. 28, 1998, 112 Stat. 2917, as amended by Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4741(b)(1), title V, §5005(a)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A-586, 1501A-593, provided that:

“(a) **IN GENERAL.**—Not later than November 1, 2003, the Register of Copyrights and the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a joint report evaluating the effect of the amendments made by this title [enacting this chapter and amending sections 1338, 1400, and 1498 of Title 28, Judiciary and Judicial Procedure].

“(b) **ELEMENTS FOR CONSIDERATION.**—In carrying out subsection (a), the Register of Copyrights and the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall consider—